JURISGRADIBUS-*Articles* **ISSN: 2585-3554**

October-December, vol. 4, 2023 Article 2

DISARMAMENT AND NON-PROLIFERATION TREATIES. CASES OF INTERNATIONAL WITHDRAWAL OF TREATIES

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DOI:10.5281/zenodo.10462469

Doi: 10.5281/zenodo.10462469

DISARMAMENT AND NON-PROLIFERATION TREATIES. CASES OF INTERNATIONAL WITHDRAWAL OF TREATIES

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Abstract: The aim of this work is to shed light on cases of denunciation and withdrawal at an international level as a consequence of a crisis that is not so much legal as regards the institution of the treaties itself but as a political one and of the interests of the states involved. North Korea as well as the United States in recent years are protagonists of the way they have tried to get away from a treaty for reasons that often cannot be explained and/or understood precisely and clearly.

Keywords: NPT treaty; withdrawal; termination of an international treaty; international peace; international treaties; treaty law; public international law; rebus sic

stantibus clause; law of treaties; JCPOA; IAEA; KEDO.

INTRODUCTION

The denunciation of the 1987 Intermediate-Range Nuclear Forces (INF) Treaty by the United States[1], the crisis in the defense sector and security at a global level, as well as the abandonment of the so-called Joint Comprehensive Plan of Action (JCPOA) of 2015 have put the international community in a substantial crisis to talk about withdrawing from disarmament and non-proliferation treaties.

Within this context, we recall the disarmament treaty that was signed with the USSR which prohibited the concluding parties from possessing, producing, or testing nuclear missiles with a range between 500 and 5000 km[2]. A treaty that was signed according to the needs of the time. After the Cold War, this treaty gave way to the so-called Euromissiles (Kühn, Pèczeli, 2017). In particular, on 2

[1] https://nsarchive.gwu.edu/briefing-book/russia-programs/2019-08-02/inf-treaty-1987-2019

[2] https://2009-2017.state.gov/t/avc/trty/102360.htm#text

February 2019, the US Secretary of State M. Pompeo affirmed the attempts of the US to denounce the treaty giving as a reason: "(...) the (alleged) violation of some conventional provisions by Russia (...)" and as a consequence the immediate suspension of the application of the treaty[3]. Art. 15, par. 2 of the INF Treaty provided for the notification to be effective six months after the date of notification[4]. Trump's administration was in favor to revoke its notification if the counterparty ceases to violate the conventional provisions[5]. The Russian government not

[3]U.S. Department of State Press Release, U.S. Intent to Withdraw from the INF Treaty (2 Feb. 2019): https://www.state.gov/secretary/remarks/2019/02/288722.htm. U.S. Department of State, Adherence to and Compliance with Arms Control, Nonproliferation and Disarmament Agreements and Comments 8 (2014): https://www.state.gov/documents/organization/230108.pdf

[4]"(...) 2. Each Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty if it decides that extraordinary events related to the subject matter of this Treaty have jeopardized its supreme interests. It shall give notice of its decision to withdraw to the other party six months prior to withdrawal from this Treaty. Such notice shall include a statement of the extraordinary events the notifying party regards as having jeopardized its supreme interests (...)".

[5]According to the declarations of Pompeo: "(...) the United States provided

only rejects all charges, but counter-accuses the United States of having violated the treaty for years[6] (Falbraith, 2019; Galbraith, 2020).

Regarding the Joint Comprehensive Plan of Action (JCPOA), commonly known as the Iran nuclear deal, the unilateral desire for collaboration in sectors such as nuclear non-proliferation was evident. Within this context, the joint action plan relating to the Iranian nuclear sector was noted, which was adopted by five permanent members of the Security Council together with Germany (P5+1), the EU and finally Iran. In particular, Iran has agreed to drastically reduce its capacity to enrich uranium and in exchange to obtain the removal of economic sanctions (Liakopoulos, 2020b) which are imposed by the United States, European

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Russia (...) with formal notice that the United States will withdraw from the INF Treaty in six months, pursuant to Article XV of the Treaty. (...) If Russia does not return to full and verifiable compliance with the Treaty by eliminating all 9M729 missiles, their launchers, and associated equipment in this six-month period, the Treaty will terminate (...)".

[6]Russian Foreign Ministry Press Release, Foreign Ministry Statement (2 February 2019): http://www.mid.ru/en/web/guest/maps/us/-/assetpublisher/unVXBbj4Z6e8/content/id/3495846

Union and United Nations after the development of its nuclear program[7]. Trump's presidency was against this type of agreement and as can be seen on 8 May 2018 the relative withdrawal by the United States from the JCPOA was announced, arriving at the other side of the coin of introducing sanctions against the Iranian state (Trump, 2018). European states have shown that they are critical of Washington's decision and were ready to maintain the relevant agreement[8], but Tehran, on 7 July 2019, affirmed the increase in the rate of uranium enrichment beyond the limits that were set in the JCPOA (Baumont, 2018).

As far as the JCPOA is concerned, it was not a source of legal obligations for the parties by providing for the adoption of voluntary measures (Mulligan, 2017). It was an agreement that had a political character. It was considered against itself for the effects it had in Resolution no. 2231 of the Security Council. On 20 July 2015 the Security Council

[7] http://www.europarl.europa.eu/cmsdata/122460/full-text-of-the-iran-nuclear-deal.pdf.

[8] https://eeas.europa.eu/headquaters/headquarters-homepage/53230/joint-statement-highrepresentative-federica-mogherini-and-foreign-ministers-jeanyves-le_en.

unanimously approved the related resolution which stated:

> "(...) the adoption of the JCPOA and Member States are invited to lend support to its implementation; provides for some exceptions to the restrictive measures in force against Iran; and establishes the calendar and commitments undertaken by the states party to the agreement to achieve the cessation of the aforementioned measures"[9].

Part of the "voluntary measures" included in the JCPOA have been transformed into legal obligations for the UN Member States (Liakopoulos, 2019)[10]. This was a "decision" and not a "recommendation". However, only some of the terms used therein appear to create legal obligations for UN Member States. An opinion that is not fully confirmed[11].

[9]S/RES/2231.

[10]ICJ, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, in ICJ Reports, 1971, par. 114: "(...) a resolution of the Security Council should be carefully analyzed before a conclusion can be made as to its binding effect (...)".

[11]Alleged violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America), Application Instituting Proceedings, 16th July 2018: https://www.icj-cij.org/files/case-related/175/175-20180716-APP-01-00-EN.pdf.

On 16 July 2018 and after the American sanctions, Iran decided to appeal to the International Court of Justice (ICJ)[12]. The Iranian government did not complain about the violation by the US of the relevant JCPOA treaty but of the related provisions of the Treaty of Friendship regarding economic and consular relations of 1955[13]. Especially, Iran referred to Art. 21, par. 2, of the relevant treaty[14] which according to the United States the ICJ did not have the relevant jurisdiction over the case[15]. The appellant asked in

[12]Alleged violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America), Application Instituting Proceedings, op. cit., parr. 39-49.

[13]See in particular parr. 3-7 of Art. 21, par. 2: "(...) any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other pacific means (...)".

[14]Alleged violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America), Order, 3rd October 2018, par. 12: https://www.icj-cij.org/files/case-related/175/175-20181003-ORD-01-00-EN.pdf

[15]Alleged violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America), Request for the Indication of Provisional Measures, 16th July 2018, parr. 23-

this regard:

> "(...) the withdrawal of the sanctions already introduced and the end of the threats to introduce new ones; guarantees of non-repetition of violations; and compensation for the damage they have caused to its economic system[16] (...) the immediate suspension of the application of sanctions (...)"[17].

The ICJ on 3 October 2018 decided that it had jurisdiction over the case, partially granted the request regarding economic measures as a restrictive means:

> "(...) relating to the importation and purchase of goods required for humanitarian needs, and to the safety of civil aviation (...)"[18].

After the relevant ruling of the ICJ, the Secretary of State

43: https://www.icj-cij.org/files/case-related/175/175-20180716-REQ-0100-EN.pdf

[16]Alleged violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America), Order, op. cit., par. 69.

[17]U.S. Department of State Press Release, Remarks to the Media, 3 October 2018: https://www.state.gov/secretary/remarks/2018/10/286417.htm

[18]According to the UNODA (United Nations Office for Disarmament Affairs) see: the Geneva Protocol of 1925, and the Convention on the Prohibition of the Use of Environmental Modification Techniques for Military or Any Other Hostile Purposes of 1976.

Pompeo affirmed the denunciation of the treaty of friendship that was concluded with Iran. Decision which had no effect on the jurisdiction of the ICJ and in the case under investigation.

DENOUNCEMENT AND WITHDRAWAL OF DISARMAMENT AND NON-PROLIFERATION TREATIES

According to Art. 54, letter. a) Vienna Convention on the Law of the Treaties (VCLT) (Buga, 2018; Dörr, Schmalenbach, (eds.), 2018; Chang-Tung, Garcia, 2019; Hollis, 2020; Fitzmaurice, Merkouris, 2020) a state seeks to dissolve treaty obligations for a treaty. The denunciation or withdrawal it grants has broad discretion to the state concerned. Thus it is foreseen that a state can exercise the right in question if it considers that extraordinary events connected to the subject of the treaty have endangered other interests of a "superior" nature.

Art. 10, par. 1 of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) reported that:

> "(...) each party shall in exercising its national sovereignty

> (...) the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests (...)" (Liakopoulos, 2022).

Withdrawal clauses which are formulated in overlapping terms and are found in various multilateral treaties such as: the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction of 1992; the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological Weapons and on Toxic Weapons and on their Destruction of 1972; the Convention on the Prohibition of Nuclear Weapons in Latin America and the Caribbean of 1967 (so-called Treaty of Tlateloco); the Treaty on the Partial Ban of Nuclear Expressions of 1963. These are clauses formulated after denunciation and included in bilateral treaties regulating the matter by mentioning: the Anti-Ballistic Missile ABM Treaty of 1972;

the 1990 Treaty on Conventional Armed Forces in Europe (CFE); and the so-called "New START" of 2010 (New Strategic Arms Reduction Treaty).

There are many treaties and clauses but the problem of interpreting the notions regarding extraordinary events and the supreme interests of the states remains. We do not have a general and/or abstract interpretation given that some states have indicated through unilateral declarations that they are extraordinary events which consider the exercise of the right of complaint or withdrawal as legitimate. When acceding to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Iran declared in particular:

> "(...) non compliance with the principle of equal treatment of all states parties in implementation of all relevant provisions of the Convention; disclosure of its confidential information contrary to the provisions of the Convention; imposition of restrictions incompatible with the obligation under the Convention (...)" (Den Dekker, Coppen, 2012)[19].

On the other hand, Pakistan spoke of: "(...) abuse of the

[19]See also the United Nations, Treaty Series, Vol. 1997, p. 453, par. 2.

verification provisions of the Convention (...)"[20]. The United States regarding the Anti-Ballistic Missile (ABM) treaty declared that if complete strategic offensive arms limitations are not achieved within five years, "U.S. supreme interests could be jeopardized". This, it would constitute a basis for withdrawal from the ABM Treaty[21].With regard to the Comprehensive Nuclear Test Ban Treaty of 1996 and the declarations made by Pakistan and the United States at the end of the negotiations, the Pakistani state states that it considers the espionage activities conducted against it by other contracting states to be "extraordinary events"[22].W. Clinton states that the United States considers it an "extraordinary event" the fact that, in the opinion of the national authorities, the safe maintenance of nuclear weapons present in its arsenal requires carrying out a test to verify its efficiency[23]. In the

[20]United Nations, Treaty Series, Vol. 1997, p. 451, par. 3.

[21]https://media.nti.org/documents/abm_treaty.pdf

[22]Official Records of the 125th Plenary Meeting of the General Assembly of the United Nations, Fiftieth Session, 10 September 1996, UN Doc A/50/PV.125, pp. 8-9.

[23]Statement of US President Clinton on the Nuclear Weapons Test Ban Negotiations (11 August 1995), Final verbatim record of the Conference of

case of the CFE Treaty, a conventional clause lists some of the circumstances in which the states parties (Russian Federation and the United States) will be able to exercise the right of denunciation[24].

Within this context we must say that there are treaties that are established for zones free from nuclear weapons[25] and that allow withdrawal upon verification of conventional clauses and not on the application of the provision containing Art. 60 VCLT and the principle of inadimplenti non est adimplendum allowing withdrawal as a response to the violation of others (Hollis, 2020)[26]. Art. 13 of the South

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the Eighteen-Nation Committee on Disarmament, Meeting 734, CD/PV.734.

[24]Art. 19, par. 3: "(...) each state party shall, in particular, in exercising its national sovereignty, have the right to withdraw from this Treaty if another state party increases its holdings in battle tanks, armored combat vehicles, artillery, combat aircraft or attack helicopters, as defined in Article II, which are outside the scope of the limitations of this Treaty, in such proportions as to pose an obvious threat to the balance of forces within the area of application (...)".

[25]The relevant conclusions was referred at Art. 7 TNP. Until know was concluded only five.

[26]According to Art. 60 VCLT: "(...) a material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part. 2. A

Pacific Nuclear-Weapon-Free Zone Treaty of 1985 (so-called Rarotonga Treaty) states that:

> "(...) this Treaty is of a permanent nature and shall remain in force indefinitely, provided that in the event of a violation by any party of a provision of this Treaty essential to the achievement of the objectives of the

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material breach of a multilateral treaty by one of the parties entitles: (a) The other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either: (i) In the relations between themselves and the defaulting state, or (ii) As between all the parties; (b) A party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting state; (c) Any party other than the defaulting state to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty. 3. A material breach of a treaty, for the purposes of this article, consists in: (a) A repudiation of the treaty not sanctioned by the present Convention; or (b) The violation of a provision essential to the accomplishment of the object or purpose of the treaty. 4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach. 5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to pro visions prohibiting any form of reprisals against persons

> Treaty or of the spirit of the Treaty, every other party shall have the right to withdraw from the Treaty. Withdrawal shall be effected by giving notice twelve months in advance to the Director who shall circulate such notice to all other parties (...)"[27].

The withdrawal clauses that are included in the disarmament and non-proliferation treaties provide that the withdrawing state is involved at the moment of expiration in the notice period in an armed conflict which continues to be bound by the conventional provisions until it ceases to take part in the relevant hostility. This context was provided for in the Treaty on the Prohibition of

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protected by such treaties (...)".

[27]See Art. 22 of the 1995 Treaty establishing a nuclear-free zone in Southeast Asia (so-called Bangkok Treaty). Art. 20 of the Treaty of Pelindaba, relating to the creation of a nuclear-free zone in Africa of 1996; Art. 31 of the Semipalatinsk Treaty on the Central Asia Nuclear-Weapon-Free Zone of 2006; and Art. 31 of the Treaty of Tlateloco (art. 31). However, this category of treaties does not include the reporting of cases of serious violations of conventional provisions and without the obligation to have provided a period of notice in relation to the treaty stipulated by Brazil and Argentina relating to the peaceful use of nuclear energy which was stipulated in 1991 and according to the relevant art. 19.

Nuclear Weapons of 2017 (not yet entered into force)[28]; in the Cluster Munitions Convention of 2008[29]; in the Convention on the Prohibition of the Use, Stockpiling, Production, Sale of Anti-Personnel Mines and Their Destruction of 1997[30]; and in the Convention on the Prohibition or Limitation of the Use of Certain Conventional Weapons of 1981[31]. In particular, the last convention provides that at the end of the notice period the withdrawing state continues to occupy the foreign territory which is bound by the relevant conventional provisions until the end of this occupation.

The existence of the necessary conditions as a type of clause for the exercise of the right of complaint or withdrawal is read as "a particular resolutive condition". The appreciation of the occurrence of which can result from purely subjective considerations as well as the assessment of the suitability of a certain event to endanger national interests escape the possibility of review by the

[28]Art. 17 VCLT.

[29]Art. 20 VCLT.

[30]Art. 20 VCLT.

[31]Art. 9 VCLT.

other states parties. This is related to the "extraordinary" or to the object of the treaty to be susceptible to dispute (Den Dekker, Coppen, 2012). A limit to the (ab)use of the right of complaint or withdrawal comes from a general duty to execute the treaties in good faith according to Art. 26 VCLT (Fitzmaurice, Merkouris, 2020) even if this article does not specify exactly whether the duty in question consists as well as whether they derive significant indications for the preparatory work of the project for the international responsibility of the International Law Commission (ILC)[32] as well as the relevant international jurisprudence[33]. The risk of abuse by states as part of these

[32]See the Special Rapporteur Waldock affirms that: "(...) a treaty in force is binding upon the parties and must be applied by them in good faith in accordance with it terms and in the light of the general rules of international law governing the interpretation of treaties (...)". YILC, 1964, Vol. I, pp. 23-5; YILC, 1964, Vol. II, p. 7.

[33]Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), Advisory Opinion, in ICJ Reports, 1948, p. 63. In Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970). ICJ, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), op. cit.

types of peace treaties may be remote.

THE REBUS SIC STANTIBUS CLAUSE

According to Art. 62 VCLT (Fitzmaurice, Merkouris, 2020) as an extraordinary character that is connected with the object of the treaty are the contractual constraints that fall (Liakopoulos, 2019)[34] according to the rebus sic stantibus clause in a change of a fundamental nature of the relevant circumstances. The theme of these conventional clauses can be read as a restatement of the rebus sic stantibus clause and are found in practice (Shaw, Fournet, 2011) as a

[34]See in particular from the ICJ: Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, in ICJ Reports, 1980, p. 96, par. 49. North Sea Continental Shelf cases (Federal Republic of German v. Denmark; Federal Republic of German v. Netherlands), Judgment, in ICJ Reports, 1969, par. 85). The North Atlantic Coast Fisheries Case between Great Britain and United States, Decision of 07 September 1910, RIAA, XI, p. 188, lett. e). Affaire concernant le Filetage à l'Intérieur du Golfe du Saint-Laurent between Canada and France, Decision of 17 July 1986, RIAA, XIX, parr. 27 e 61. Affaire du lac Lanoux entre Espagne et France, Décision du 16 novembre 1957, RIAA, XII, p. 305. Tacna-Rica question between Chile and Peru, Decision of 4 March 1986, RIAA, II, pp. 929-30.

response which is negative and which establishes the conditions for application which are more restrictive and which reconcile the flexibility of participation in disarmament and proliferation treaties.

According to Art. 62 VCLT the fundamental change of circumstances occurs with respect to the circumstances that exist at the time of the conclusion of a treaty and as foreseen by the parties calling as a reason for denunciation or withdrawal the existence of such circumstances which constitute an essential basis of the consent of the parties that are bound and that such a change does not entail the transformation of obligations that remain to be fulfilled under the treaty. The fundamental change of circumstances does not call for denunciation or withdrawal as a reason if it derives from a related violation and which operates as a party invoking it and as a conventional obligation of any other international obligation to the detriment of another party to the treaty and/or in the case that a treaty sets a border. This article provides that the fundamental change calls for the suspension of the treaty (Liakopoulos, 2020a)[35].

[35]See Art. 22 of the ILC and especially from the Fitzmaurice report of 1957.

If this were not the case, the clauses on withdrawal and denunciation are contained in the disarmament and non-proliferation treaties allowing the related treaty constraints to be called extraordinary events and to be connected with the object of the treaty which have put the superior interests of the state at risk. Complainant or withdrawing is considered here as an event that foresees the moment of conclusion of the treaty. Such clauses do not provide for extraordinary events that transform the obligations remaining to be fulfilled under the treaty as well as do not allow a state party to invoke the events for the suspension and enforcement of a treaty. The fundamental change of Art. 62 VCLT as a provision does not have the characteristics of the extraordinary situation and does not concern the superior interests of the states

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Report by G.G. Fitzmaurice, 1957, Doc. A/CN.4/107, in YILC, 1957, II, pp. 32-33. The Report by Sir H. Waldock, 1963, Doc. A/CN.4/156 ad Add.1-3, in *YILC,* 1963, II, p. 36 ss. Reports of the International Law Commission on the second part of its seventeenth session and on its eighteenth session, 1966, Doc. A/6309/Rev.1, p. 256. See also in argument: A/CONF.39/C.1/L.320; A/CONF.39/C.1/L.299; A/CONF.39/C.1/L.335). United Nations Conference on the Law of Treaties, First and second sessions, Official Records, 1971, Doc. A/CONF.39/14, parr. 184.

parties. This is evidence of clauses that have different peaceful content and extraordinary events that constitute a fundamental change in circumstances and vice versa.

THE UNITED STATES' DENUNCIATION OF THE 1972 ABM TREATY

The slowdown of offensive nuclear weapons (El-Haj, 2019) and above all after the Cold War and the theory of mutual assured destruction laid the crisis foundations for the ABM Treaty where on 13 December 2001 after negotiations with the Russians the President G.W. Bush is moving forward with the related complaint[36]. The decision was later communicated to the State Department as the basis of the complaint and as an argument that:

> "(...) the circumstances affecting U.S. national security have changed fundamentally since the signing of the ABM Treaty in 1972[37] (...) the conventional clause which allows

[36] https://www.armscormscontrol.org/act/2002-01/us-withdrawal-abm-treaty-president-bush%E2%80%99s-remarks-usdiplomatic-notes

[37] Statement by the White House Press Secretary-Announcement of Withdrawal from the ABM Treaty, 13 December 2001,

> denunciation as extraordinary events, connected to the object of the treaty, have endangered the supreme interests of the states parties (art. 15, par. 2) (...)" (Den Dekker, Coppen, 2012).

These are the reasons that allow us to have many doubts about it.

The United States provoked the relevant denunciation and at the same time the rebus sic stantibus clause as a customary norm and the clause that the treaty allows the exercise of this right as a conventional norm. The specialty criterion lex specialis derogat legi generali does not find its application (Müllerson, 2001) and ,

> "(...) express provisions providing for the possibility of the denunciation of treaty do not excluded the use of another concept available for treaty termination, that of changed circumstances (rebus sic stantibus) (...)[38]. The sentence in the Racke case (...)[39] concerns the suspension from the

http://web.archive.org/web/20020223065455/http://www.state.gov/t/ac/rls/fs/2001/6848.htm

[38]CJEU, C-162/96, A. Racke GmbH & Co. v. Hauptzollamt Mainz of 17 June 1998, ECLI:EU:C:1998:582, I-03655, parr 53-56.

[39]Statement by the White House Press Secretary-Announcement of Withdrawal from the ABM Treaty, 13 December 2001: https://georgewbush-whitehouse.archives.gov/news/releases/2002/06/2

> application of the cooperation agreement between the EEC and the former Federal Republic of Yugoslavia. Despite said agreement being equipped with a clause on denunciation (art. 60), the Council of the EEC can invoke the clause rebus sic stantibus (customary rule) to suspend it (given the dismemberment of the aforementioned state and the armed conflict within it) (...). It is an argument fragile, since the agreement in question is not the subject of denunciation but of suspension, an eventuality not foreseen and regulated in it (...)" (Den Dekker, Coppen, 2012).

The reasons proposed by the United States are dissolved in the treaty in an undoubted way and refer to the conditions of the rebus sic stantibus clause and with reference to Art. 15, par. 2 of the treaty as an extraordinary event and as supreme interests. Already in the declaration of 13 December 2001 the State Department referred to fundamental changes in circumstances such as the end of the Cold War, the collapse of the USSR and, the Russian Federation becoming an ally[40]. These are unpredictable

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[40]Statement by the White House Press Secretary-Announcement of Withdrawal from the ABM Treaty, 13 December, 2001.

changes when the conclusion of the treaty has the effect of radically transforming the contractual obligations to change the circumstances which constituted an essential basis of the parties' consent to bind themselves. The changes of the time are not circumstances that arise from violations and from the contractual obligation of other international obligations that originate from the counterparty.

As an extraordinary event that is related to the subject of the treaty that compromised the national interest the United States called the increase in threats that are related to the proliferation of weapons of mass destruction and Islamic terrorists and the rogue states that they required, according to the provisions of the treaty, to strengthen the defense systems against the relative launch of long-range missiles (Heintschel Von Heinegg, 2021). The United States is exposed to terrorist threats as we saw on 11 September 2001, the states included in the so-called axis of evil, during the Bush presidency, which are suspected of possessing weapons of mass destruction with the hypothesis later proving to be unfounded. The genuineness and extraordinary nature of the connection to an object of the

treaty of the reasons that come after the complaint seem to exist. This compromise of national interest comes from an assessment that only the state concerned can produce.

The Department of the United States has specified in this regard that:

> "(...) are released from the conventional constraints pursuant to Art. 15 of the treaty and that, consequently, the denunciation will be effective after six months from the date of notification (...) to the application of the rebus sic stantibus clause (...) while not raising objections, the Russian Federation withdraws the day following the one in which the aforementioned denunciation is effective the signature of the START II Treaty of 1993 (Den Dekker, Coppen, 2012) - thus putting an end to the possibility of its entry into force (...)".

Perhaps the rebus sic stantibus changes were just justification statements to move forward with new proliferation projects in an official way regardless of who was president in the United States.

REASONS FOR WITHDRAWAL. THE CASE OF NORTH KOREA'S WITHDRAWAL FROM THE 1968 NUCLEAR NON-PROLIFERATION TREATY

The interested state party is the one that highlights the denunciation and withdrawal clauses which are typical in disarmament and non-proliferation treaties as the right to evaluate the conditions for dissolving the treaty obligations and allowing the states parties to establish the validity of the reasons for the complaint or withdrawal. This proves the fact that such clauses are provided in the deed of denunciation or withdrawal which are indicated by the reasons for this decision and are often based on disputes of extraordinary connection to the object of the treaty and to the event which is called for to dissolve the obligations pacts.

The procedure provided for by Art. 65-68 VCLT (Buga, 2018) for the extinction and/or recession of the treaties[41] and the

[41]See the Letter dated 12 March 1993 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations addressed to the President of the Security Council, UN doc. S/25405,

resulting possibility of the fact that these disarmament and non-proliferation treaties such as the NPT provide for the act of denunciation or withdrawal after information to the Security Council.

On 12 March 1993, North Korea informed by notification of the withdrawal from the NPT. According to Art. 10, par. 1 this decision was based on two extraordinary events connected with the subject matter of the treaty which put its national sovereignty at risk[42]. The first of these has to do with the military exercise that was conducted by the United States and South Korea in their territory at the so-called Team Spirit Exercise and the second has to do with the approval of a resolution that was supported by both Washington and Seoul as an organization that requires inspection of a special nature of military sites that according to North Korean authorities does not carry out nuclear research activities.

The perplexities under the extraordinary nature and

Annex.

[42]See: Letter dated 12 March 1993 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations addressed to the President of the Security Council, UN doc. S/25405, Annex.

connection to the object of the treaty include as extraordinary qualification the military exercises which are joint between the United States and the South and which have been going on for years (Bunn, Timerbaev, 2005) as well as the activities which the IAEA has carried out for its inspectors and which falls within these provisions of the statute (Asada, 2004). The connection to the object of the NPT is questionable considering that this exercise is used with conventional weapons (Den Dekker, Coopen, 2012) and also has a certain relevance to the subject matter of the treaty, thus subsisting the related detailed accusations.

The reasons coming from North Korea for the withdrawal from the NPT according to Art. 10, par. 1911 have no major foundation bases. In particular, on 1st April 1993, the United States, the Russian Federation and the United Kingdom have failed in an impartial manner with regard to the performance of the functions of co-custodians of the treaty[43] and leave a joint statement asking the reasons given by Pyongyang representing events that are

[43]Art. 76, par. 2, VCLT: "The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance". UN Doc. S/25515.

connected with the object of the treaty and stating that such a position is part of: "(...) a serious threat to regional and international stability (...)"[44]. The Council of Governors of the International Atomic Energy Agency (IAEA) obviously approved the relevant resolution[45], with only one vote against by China and Libya and the relative abstention of India, Pakistan, Syria and Vietnam, maintaining that North Korea is in default and that it respects the safeguard agreement which has been concluded with the organization according to Art. 3 of the NPT[46].

[44]Report of the Director General on the Implementation of the Resolution Adopted by the Board on 25 February 1993 (GOV/2636) and of the Agreement between the Agency and the Democratic People's Republic of Korea for the Application of Safeguards in Connection with the Treaty on the non-Proliferation of Nuclear Weapons (INFCIRC/403), GOV/2645.

[45]Agreement of 30 January 1992 between the Government of the Democratic People's Republic of Korea and the International Atomic Energy Agency for the application of safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons: http://www.iaea.org/Publications/Documents/Infcircs/Others/inf403.shtml

[46]Report of the Director General on the Implementation of the Resolution Adopted by the Board on 25 February 1993 (GOV/2636) and of the

The Council of governors decided according to Art. 12, letter. c) of the statute of the organization and Art. 19 of the aforementioned safeguard agreement to bring the issue to the UN General Assembly and to the Security Council[47]. It is asked whether these two bodies of the UN can express themselves on the relevant decision of Pyongyang by ending participation in the NPT and in particular in the Security Council according to Art. 10, par. 1 NPT where the North Korean government affirmed its intention to withdraw from the treaty.

The threat to international peace and security was inspired by Art. 39 of the Charter of the UN[48] putting the Security

Agreement between the Agency and the Democratic People's Republic of Korea for the Application of Safeguards in Connection with the Treaty on the non-Proliferation of Nuclear Weapons (INFCIRC/403), GOV/2645.

[47]Letter dated 12 March 1993 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations addressed to the President of the Security Council, UN doc. S/25405, Annex: https://digitallibrary.un.org/record/164464?ln=ar

[48]Art. 39: "(...) the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security (...)".

Council to enjoy a discretion that determines the conditions for the adoption of peaceful or armed measures that are provided for in the subsequent articles. The Security Council took into consideration as a threat to peace events that were dissimilar to each other and put the issue of North Korea's withdrawal from the NPT as a configuration that defines to the three co-custodians of the treaty: "(...) serious threat to regional and international stability (...)". The North Korean conduct constitutes a prerequisite for the adoption of measures pursuant to Chapter VII of the Charter. Member States of the Security Council affirm that the proliferation of weapons of mass destruction constitutes a threat to international peace and security[49] as well as of the content of these resolutions, and of the broad discretion of which enjoys. The possibility that the Security Council decides or recommends the measures provided for in Chapter VII against North Korea cannot be theoretically excluded, even if it should first be ascertained that the North Korean state is actually determined to develop or acquire nuclear weapons.

After many discussions they arrived at the exercise of the

[49]S/RES/23500-1540.

veto on 11 May 1993 (Bunn, Timerbaev, 2005) where the Security Council adopted a resolution which limited itself to calling North Korea to revoke the relevant notification which decided for the withdrawal by the NPT and to fulfill the obligations that are foreseen by the Safeguards Agreement concluded with the organization[50]. No measure has been foreseen in Chapter VII of the Charter which has been decided or recommended. On 11 June 1994, North Korea agreed to examine its position from scratch, specifying that it had decided to revoke the withdrawal notification and to suspend:

> "(...) as long as it considers necessary the effectuation of its withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons (...)"[51].

After this decision, a binding agreement was signed as an agreed framework based on the United States and its allies replacing the North Korean graphite reactors and supplying the country with oil while the Pyongyang government has not stopped publishing on various nuclear

[50]S/RES/825.

[51]Joint Statement of the DPRK and the USA, New York, 11 June, 1993: https://nautilus.org/wp-content/uploads/2011/12/CanKor_VTK_1993_06_11_joint_statement_dprk_usa.pdf

research sites inspections concluded by the IAEA (Asada, 2004)[52].

On 10 June 1994, the Secretary General of the IAEA requested that the Board of Governors adopt a resolution that imposed sanctions on North Korea allowing inspectors to arrange entry into certain sites suspected of conducting nuclear research even in a manner prohibited by the provisions of the NPT[53]. The North Korean government notified the American government of the withdrawal from the IAEA Statute:

> "(...) unique status based on the temporary suspension of the effectuation of our declared withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons (...) to allow the IAEA inspections at its research sites[54] (...) so-

[52]IAEA-INFCIRC/457.

[53]IAEA-INFCIRC/447. See also Art. 18, lett. d) of the statute of IAEA that affirms: "(...) at any time after five years from the date when this Statute shall take effect in accordance with paragraph E of article XXI or whenever a member is unwilling to accept an amendment to this Statute, it may withdraw from the Agency by notice in writing to that effect given to the depositary government referred to in paragraph C of article XXI, which shall promptly inform the Board of Governors and all members (...)". https://www.iaea.org/about/governance/list-of-member-states

[54]IAEA-INFCIRC/457.

> called "Agreeded Framework", North Korea agrees to remain a state party to the NPT in all respects and to implement the Safeguards Agreement concluded with the IAEA (...)"[55].

On 10 January 2003, under President Bush, North Korea was included in the list of rogue states, notifying that the withdrawal from the NPT immediately withdraws the suspension of the withdrawal that was decided ten years earlier[56]. The extraordinary events that are connected with the treaty that compromises national interests actually call the manipulation that the IAEA undergoes at the hands of the United States a policy of threat and horror towards itself included in the so-called axis of evil[57]. After 11 January 2003, North Korea deemed a state party to the NPT to be terminated from the safeguards agreement, expected to remain in effect as long as North Korea is a state party to the NPT (Asada, 2004).

[55]UN Doc. S/2003/91, 3-4.

[56]Art. 26, Agreement of 30 January 1992 between the government of the Democratic People's Republic of Korea and the International Atomic Energy Agency for the application of safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons.

[57]IAEA-GOV/2003/4.

This is a position that is contested by the IAEA given that it claims that the NPT does not have clauses that allow the suspension of a withdrawal notification nor a similar possibility that is provided for by general international law[58]. This position puts Art. 68 VCLT (Fitzmaurice, Merkouris, 2020) at the forefront allowing the unilateral revocation of the complaint and notification or withdrawal as a declaration tool for the extinction and the successful withdrawal even without effects but not of a suspensive nature.

The opinion that was reported by the IAEA stated that on 10 January 2003, North Korea notified for a second time its withdrawal from the NPT and as a consequence Art. 10, par. 1 of the treaty and the related withdrawal is effective after three months from the date of notification[59]. This notice period the Security Council has not raised objections that respect the reasons given to the North Korean government to base its withdrawal and do not contest events that are indicated by the withdrawal act and which lack the extraordinary connection to the object of the treaty. The

[58]S/RES/1718.

[59]S/RES/1874.

Security Council respected Pyongyang's withdrawal but did not qualify it as an act of threat to peace and according to Chapter VII of the UN Charter. The three Resolutions in particular of 2006[60], 2009 (Bunn, Timerbaev, 2005), and 2013[61] limited North Korea's withdrawal from the NPT and in practice asked to take a "(...) position with respect to the aforementioned treaty and the safeguard". It is interesting to note that in the aforementioned resolutions the Security Council asks the North Korean state to return to the Treaty on the Non-Proliferation of Nuclear Weapons and International Atomic Energy Agency (IAEA) safeguards[62].

The reasons conclude that the basis of North Korea's withdrawal from the NPT refutes and establishes the repudiation of the treaty that constitutes the threat to peace. The Security Council has decided to follow and be in favor of a political solution[63].

This position is based on the three resolutions referred to

[60]S/RES/2094.

[61]S/RES/2270, 2321, 2356, 2371, 2375, 2397, 2407.

[62]S/RES/2407.

[63]NPT/CONF.2005/WP.

above and in subsequent others[64] where the Security Council according to Chapter VII of the Charter or the UN allows a series of sanctions against North Korea and a guilty of conducting nuclear tests after having assembled the ballistic missiles.

Australia and New Zealand after the relevant revision of the treaty in 2005 and the North Korean withdrawal have proposed that the withdrawal notification according to Art. 10, par. 1 puts the Security Council in the position to decide:

> "(...) automatically and immediately not only for the purpose of evaluating the "genuineness" of the reasons given for releasing itself from the contractual obligations, but also to establish the conditions that would apply in the event that a notified withdrawal proceeds[65] (...) and that in given circumstances the withdrawal from the NPT could constitute a "threat to peace". The EU Member States are also of the same opinion (...)"[66].

[64]NPT/CONF.2005/WP.32.

[65]NPT/CONF.2005/WP.22.

[66]Addressing withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons, Working paper submitted by Armenia, Australia, Austria, Belarus, Belgium, Bulgaria, Canada, China, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece,

Within this context, Japan has not allowed the withdrawal of the withdrawing state that has developed by failing to fulfill its obligations and the ability to produce nuclear weapons (Ascensio, 2011). Already at the 2015 review conference, a large group of states stated that the Security Council had to meet after the notification of withdrawal from the treaty, also evaluating the resulting consequences[67].

WHAT ARE THE EFFECTS OF THE WITHDRAWAL OF A TREATY? THE CASE OF NORTH KOREA SINCE THE 1968 NUCLEAR NON-PROLIFERATION TREATY

Art. 70 VCLT (Buga, 2018) concerns the extinction of a bilateral treaty which does not entail rights, obligations and legal situations of the states parties. The effect of the

Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Slovakia, Slovenia, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland and United States of America, NPT/CONF.2015/WP.47.

[67] http://www.kedo.org/pdfs/EstablishmentKEDO.pdf

execution of the treaty before the denunciation takes effect and are prejudiced by the extinction without prejudice to the regulation convention or the agreement between the states parties. The withdrawal of a multilateral treaty does not affect the rights, obligations and legal situations of the states parties arising as a result of the execution of the treaty before the withdrawal takes effect. It is excluded that the withdrawal has retroactive effects and that it cancels the illicit nature of any violations that it places in the withdrawing state before the end of participation in the treaty. This is an article that in customary international law applies to states that are not part of the VCLT (Fitzmaurice, Merkouris, 2020), such as North Korea. The issue of the effects of the North Korean withdrawal from the NPT concerns the status of a non-nuclear party to the treaty that supplies nuclear materials, equipment and technologies that can be used for peaceful purposes as provided for in articles 4-5. These supplies can be used for the development of nuclear weapons. The question is whether the withdrawal of the NPT has the effect of eliminating participation in the treaty.

North Korea reviews the position it respects the withdrawal from the NPT in 1993 and defines the United States together with Japan and South Korea as an agreed framework, founding the Korean Peninsula Energy Development Organization (KEDO). An organization that took part in Euratom in 1997 and took charge of the necessary financing for the construction of two nuclear reactors on North Korean territory, convincing Pyongyang to stop producing elements that use uranium enrichment for military purposes.

KEDO is a treaty for the benefit of third parties. North Korea is not a party but benefits from it[68]. KEDO signs an agreement regarding the supply of two "light water" reactors which obliges the North Korean government to maintain participation in the NPT and allows periodic checks by IAEA inspectors on the basis of a safeguard agreement while maintaining the graphite reactor shut down and not building new ones[69].

[68]Agreement on Supply of a Light-Water Reactor Project to the DPRK between KEDO and the Government of the DPRK, 1995: http://www.kedo.org/pdfs/SupplyAgreement.pdf

[69]Annex 3, Agreement on Supply of a Light-Water Reactor Project to the

The KEDO executive committee decides on a partial suspension of the construction of new reactors given that the IAEA maintains that the North Korean uranium enrichment program is not interrupted. Failure to fulfill its obligations under KEDO led to North Korea's withdrawal from the NPT (11 January 2003)[70] and the restarting of the Yongbyon reactor again. Over the next few years KEDO limited itself to suspending the execution of the treaty relating to the supply of reactors and in 2006, faced with Pyongyang's failures to comply, the Executive Committee decided to dissolve the organization and renounce the related project. A new nuclear site is at an advanced stage and the know-how employs North Korean scientists to complete the construction of an experimental and now active reactor in the Yongbyon complex. North Korea's radiochemical laboratories separate plutonium from fuel that is spent produced by light water reactors (Albright, Avagyan, 2012). We also add that nuclear material according to Art. 4 NPT and North Korea received from the militarily nuclear parties to the treaty civil use which

DPRK between KEDO and the Government of the DPRK, 1995.

[70]UN Doc. S/2003/91, 3-4.

cannot be verified by the IAEA.

Withdrawal from the NPT eliminates for the state of North Korea the illegality of the non-peaceful use of nuclear supplies that are obtained before the termination of participation in the treaty. According to Art. 70 VCLT (Hollis, 2020) the withdrawal does not affect the rights, obligations and legal situations of the state parties which arose as a result of the execution of the treaty before the withdrawal takes effect and which the NPT nor the state parties provide otherwise. North Korea exercises the withdrawal and holds responsible for the use for military purposes of nuclear supplies that receive the dissolution of participation in the treaty. This is a violation of Art. 2 which affirmed that:

> "(...) each non-nuclear-weapon state party to the Treaty undertakes not to receive the transfer from any transfer or whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices (...)".

In the NPT Review Conference of 2005 states parties express themselves in the sense that the withdrawing state obliges the return of neutralize nuclear supplies which during participation in the non-proliferation regime the withdrawing state does not allow and uses equipment, technologies, facilities, and nuclear materials that are acquired by a third state prior to participation in the treaty. These supplies neutralize and return the supervision of the IAEA[71] to the state of origin. Japan[72], the United States[73], Australia and New Zealand express themselves within this spirit. Countries that have proposed intergovernmental agreements that are inherent to the supply of nuclear materials, equipment, and technologies are usually

[71]Withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons European Union common approach, Working Paper submitted by Luxembourg on behalf of the European Union, NPT/CONF.2005/WP.32.

[72]"(...) Japan also believes that the states parties should urge any supplier country of nuclear material, facilities, equipment, etc., to make necessary arrangements entitling it to require the return of any nuclear material, facilities, equipment, etc., transferred prior to the withdrawal or their neutralization (...)". Working Paper of Japan, NPT/CONF.2005/WP.22.

[73]Strengthening the implementation of article X of the Treaty on the Non-Proliferation of Nuclear Weapons Working paper submitted by the United States, NPT/CONF.2005/WP.59

included in the clause that provides for withdrawal from the NPT and the obligation of the withdrawing state to return the supplies received under international control[74]. The 2015 Review Conference on the effects of the withdrawal re-proposes several states party to the NPT that propose nuclear equipment, technologies, and materials acquired by a state that ceases participation in the treaty and which returns to the supplier state under the control of the IAEA for a period of indefinite time [75].

[74]Working paper on article X (NPT withdrawal) submitted by Australia and New Zealand, NPT/CONF.2005/WP.16.

[75]Addressing "Vienna issues": the Comprehensive Nuclear-Test-Ban Treaty, compliance and verification, export controls, cooperation in the peaceful uses of nuclear energy, nuclear safety, nuclear security and withdrawal from the Non-Proliferation Treaty, Working paper submitted by Australia, Austria, Canada, Denmark, Finland, Hungary, Ireland, the Netherlands, New Zealand, Norway and Sweden ("the Vienna Group of Ten"), NPT/CONF.2015/WP.1. Addressing withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons, Working paper submitted by Armenia, Australia, Austria, Belarus, Belgium, Bulgaria, Canada, China, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Slovakia, Slovenia, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland and United States

In North Korea the delivery and neutralization of nuclear supplies exceeds the time elapsed and especially after 2006 when Pyongyang began to continuously carry out nuclear tests and test launches of ballistic missiles carrying out nuclear programs reporting resolutions that are adopted by Security Council where the North Korean conduct is qualified by a threat to international peace and stability according to Chapter VII of the UN Charter and considering that the North Korean state interrupts the development of nuclear weapons thus allowing continuous and persistent inspections of IAEA personnel at nuclear research sites[76]. Participation in the NPT is not a superior authority that imposes resolutions for North Korea as sources of obligations that are substantial and similar as provided for in the treaty and in force so Pyongyang will not be able to lawfully possess nuclear weapons.

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of America, NPT/CONF.2015/WP.47.

[76]S/RES/1718,1874, 2094, 2270, 2321, 2356, 2371, 2375, 2397, 2407.

CONCLUDING REMARKS

The VCLT and the action of the states for the conclusion of a treaty that does not retain the possibility of unilaterally dissolving the treaty obligations are seen as a fixed point for the legal protection of the treaties. The rules pacta sunt servanda and good faith according to Art. 26 VCLT (Hollis, 2020) for denunciation and withdrawal are lawful and implicitly express each treaty establishing moreover the consensus of all other state parties. The pacta sunt servanda rule is not contradicted and the constraint arises with a limited nature and due to the possible exercise of the right in question. It seems clear that the intention of the states to withdraw and denounce this formalizes a unilateral declaration of will. This declaration has the effect of extinguishing the treaty, even if it is of a bilateral nature, trying to complete legal situations of a subjective nature that are trying to escape from a treaty. This does not cause the extinction of the treaty, i.e. multilateral treaties where the complex of subjective legal situations seeks to terminate compliance with the position of a withdrawing state.

As a basis, we note the theoretical reconstruction that

supports the exercise of the right to report or withdraw from an extinguishing agreement or the withdrawal of a party. The denunciation or withdrawal does not meet the objections of the other party during the notice period and the origins of a dispute which concludes the withdrawal of a unilateral nature of this act as noted in today's practice. According to the norms of the VCLT and to general international law, a state that has declared the dissolution of participation in a treaty obliges its will and raises the question of a recourse to a denunciation or withdrawal which is not authorized. Thus the offense entails the onset of international responsibility.

The clauses in the treaties allow denunciation and withdrawal, as well as the rules of a customary nature to dissolve treaty obligations to verify certain interruptive events regarding the life of the treaties. We can say that thus the criterion of specialty and the specific rule contained in the treaty regulates the denunciation and the withdrawal in overlapping terms as well as the withdrawal of the treaty with the rules that are established excluding the general ones. This choice is the basis of the claim to put some term to the participation of a treaty which is up to

the state and which endorses the provisions on denunciation and withdrawal of the treaty as well as the relevant general rules of the law of treaties. According to Art. 42, par. 2 VCLT the law in question does not exercise the application of the treaty or convention but does not exclude the applicability of the latter in the case of the presence of the former. The treaty increases the denunciation or withdrawal while remaining applicable the rules that are relevant for the violation, the supervening impossibility of execution, the fundamental change of circumstances.

The causes of extinction and withdrawal thus established by the VCLT (Hollis, 2020) provide rigorous criteria for their own application. Concurrence with a clause of a treaty regulating denunciation or withdrawal forces the interested state party to evaluate the opportunity to prefer cases that have to do with international treaty law. Practice demonstrates that the state makes use of the right of denunciation or withdrawal as has also been pre-established by the treaty and where the reasons can be given according to the general rules regarding termination or withdrawal. Thus the practical convenience of a

conviction of a prevalent nature in a special way corresponds with norms that are placed in the treaty.
The examination of some categories of treaties confirms that the treaties that create international organizations from heterogeneous withdrawal clauses consider the possibility of denunciation or withdrawal in the same terms and in the general rules of the law of treaties. The conventional clauses do not set conditions for withdrawal but require satisfaction of a series of conditions such as for example the fulfillment of the obligations arising from the treaty, the passage of a number of years from the date of entry into force, the conclusion of agreements based on fair sharing of costs related to the withdrawal. Thus an event occurs that causes a treaty of this type to enter into crisis where the state that intends to dissolve treaty obligations can decide to base its decision on a conventional clause. This affirms respect for the EU with regards to the relevant Art. 50 TEU of the Union regulation on self-contained regime.
The convenient exercise in practice as well as the right of complaint or withdrawal which conventionally regulates the general rules of treaty law has as its objective the

respect of the treaties themselves as well as with regard to the safety of investing at an international level. However, treaties on disarmament and non-proliferation are much more complex. Generally, the denunciation and withdrawal clauses do not allow a state to free itself from conventional constraints and events of an extraordinary nature which are connected with the object of the treaty and which put its superior interests at risk. This is a clause that guarantees wide flexibility that can be classified between events of an extraordinary nature, reasons that imply a fundamental change in circumstances and the violation that has been committed by one of the counterparties. The rule specifies this type of treaties and regulates the denunciation or withdrawal in terms such as the general rules and the specialty criterion that operates in the latter. The provision of the fundamental change of circumstances according to Art. 62 VCLT establishes the requirements of the application which is restrictive as well as the non-compliance of others according to Art. 60 VCLT (Hollis, Fitzmaurice, Merkouris, 2020). It seems unlikely that a state party to a treaty would prefer the general rule over the treaty rule for reasons of convenience.

The relationship between conventional rules in the sector of denunciation or withdrawal as well as of a general nature on the extinction and withdrawal of treaties does not find a specific definition of a univocal nature, thus evaluating the examination of terms where the conventional clause comes to possible and different definitions where the treaty and the category of treaties are considered. It is thus a question that poses the conventional clause to allow the exercise of a right that verifies a specific event, a fundamental change that has to do with the circumstances that exist at the time of the stipulation. This research is not possible to trace treaties and clauses that exclude this type of existence. This is a similar circumstance where the conventional clause prevails as well as the special one over the general one and the rules have the same field of application.

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